

**THE AMERICAN RECOVERY AND REINVESTMENT ACT -
NON-COMMERCIAL ITEMS OR SERVICES SUBCONTRACTS
("ARRA NON-CIS AGP")**

[CREI, CT, FP-NR&D, FP-R&D, LH-T&M and RSA (08/09)] [FAR 52.203-15 (03/09); FAR 52.204-11(03/09); FAR 52.215-2 (03/09)]

Introduction. This Additional General Provision (AGP) addresses requirements applicable to this Subcontract because it is funded in whole or in part with ARRA funds. The rules implementing the American Recovery and Reinvestment Act (ARRA) in the Federal Acquisition Regulation (FAR) are not yet final, and the Federal Government is still developing guidance for the ARRA, particularly concerning procedures and data elements for reporting on the use of ARRA funds. JPL will provide pertinent information to the Subcontractor as it becomes available, and this Subcontract will be made subject to any new requirements pursuant to the below paragraph entitled "Revisions to Requirements."

The Subcontractor agrees that in consideration of receipt of ARRA funds, it will comply with all of the terms, conditions, requirements and limitations set forth below. Subject to further conditions being imposed in response to supplemental rules or guidance issued by the Federal Government, this AGP is intended to implement the requirements for subcontracts funded by the ARRA. The Subcontractor should immediately notify the JPL Subcontracts Manager if it identifies any perceived inconsistency between this AGP and any other provision of the Subcontract.

Revisions to Requirements. The Subcontractor acknowledges that this AGP may be revised as JPL deems necessary, including in response to additional rulemaking and guidance from the Federal Government regarding the ARRA. The Subcontractor agrees to abide by any such revisions upon receipt of written notification thereof from JPL.

Separate Record Keeping for Subcontract Work Funded by the ARRA. If this Subcontract is funded by sources in addition to ARRA funds, the Subcontract Schedule identifies which products or services are funded under the ARRA (referred to herein as the "ARRA-funded Work"). The Subcontractor shall maintain separate records for the ARRA-funded Work in order to comply with the terms, conditions, requirements and limitations below.

I. Whistleblower Protections Under the ARRA

[The "Whistleblower Protections Under the ARRA" clause applies to all subcontracts funded in whole or in part with ARRA funds.][FAR 52.203-15 (03/09)]

(a) The Subcontractor shall post notice of employees rights and remedies for whistleblower protections provided under section 1553 of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5).

(b) The Subcontractor shall include the substance of this clause including this paragraph (b) in all lower-tier subcontracts.

II. ARRA Reporting

[The "ARRA Reporting" clause applies to any subcontract funded in whole or in part with ARRA funds that exceeds \$25,000.][FAR 52.204-11(03/09)]

This Subcontract, which is a first-tier subcontract as defined in FAR 52.204-11(a), is funded in whole or in part by the ARRA. Section 1512(c) of the ARRA and JPL's Prime Contract requires JPL to report on its use of ARRA funds, including this Subcontract. These reports will be made available to the public.

The Subcontractor shall submit reports containing the information described in (b) below (referred to as "ARRA Jobs Reports") to JPL so that JPL may include that information in its required ARRA reporting that will be made available to the public. The Subcontractor shall submit these required ARRA Jobs Reports covering a calendar quarter to the JPL Subcontracts Manager no later than the third business day after the end of that quarter.

(a) Definitions. As used in this clause:

"Jobs created" means an estimate of those new positions created and filled, or previously existing unfilled positions that are filled, as a result of the ARRA-funded Work. This definition covers only Subcontractor positions established in the United States and outlying areas (see definition in FAR 2.101). The number shall be expressed as "full-time equivalent" (FTE), calculated cumulatively as all hours worked divided by the total number of hours in a full-time schedule, as defined by the Subcontractor. For instance, two full-time employees and one part-time employee working half days would be reported as 2.5 FTE in each calendar quarter.

"Jobs retained" means an estimate of those previously existing filled positions that are retained as a result of the ARRA-funded Work. This definition covers only Subcontractor positions established in the United States and outlying areas (see definition in FAR 2.101). The number shall be expressed as "full-time equivalent" (FTE), calculated cumulatively as all hours worked divided by the total number of hours in a full-time schedule, as defined by the Subcontractor. For instance, two full-time employees and one part-time employee working half days would be reported as 2.5 FTE in each calendar quarter.

(b) The Subcontractor shall include the following information in its quarterly ARRA Jobs Reports: A narrative description of the employment impact of ARRA-funded Work. This narrative should be cumulative for each calendar quarter and only address the impact on the Subcontractor's workforce. At a minimum, the Subcontractor shall provide:

- (i) A brief description of the types of jobs created and jobs retained in the United States and outlying areas (see definition in FAR 2.101). This description may rely on job titles, broader labor categories, or the Subcontractor's existing practice for describing jobs as long as the terms used are widely understood and describe the general nature of the work; and
- (ii) An estimate of the number of jobs created and jobs retained by the Subcontractor, in the United States and outlying areas. A job cannot be reported as both created and retained.

III. Audits and Records – Negotiation

[The "Audits and Records- Negotiations" clause applies to all subcontracts funded in whole or in part with ARRA funds. This clause replaces the "Audits and Records- Negotiation" General Provision (GP) in this Subcontract.][FAR 52.215-2 (03/09)]

(a) As used in this clause, "records" includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form.

(b) Examination of costs. If this is a cost-reimbursement, incentive, time-and-materials, labor-hour, or price redeterminable Subcontract, or any combination of these, the Subcontractor shall maintain and the Contracting Officer, or an authorized representative of the Contracting Officer, shall have the right to examine and audit all records and other evidence sufficient to reflect properly all costs claimed to have been incurred or anticipated to be incurred directly or indirectly in performance of this Subcontract. This right of examination shall include inspection at all reasonable times of the Subcontractor's plants, or parts of them, engaged in performing the subcontract. The obligations and rights specified in this paragraph shall extend to the use of, and charges for the use of, the facilities under this Subcontract.

(c) Cost or pricing data. If the Subcontractor has been required to submit cost or pricing data in connection with any pricing action relating to this Subcontract, the Contracting Officer, or an authorized representative of the Contracting Officer, in order to evaluate the accuracy, completeness, and currency of the cost or pricing data, shall have the right to examine and audit all of the Subcontractor's records, including computations and projections, related to:

- (1) The proposal for the Subcontract, lower-tier subcontract, or modification;
- (2) The discussions conducted on the proposal(s), including those related to negotiating;
- (3) Pricing of the Subcontract, lower-tier subcontract, or modification; or
- (4) Performance of the Subcontract, lower-tier subcontract or modification.

(d) Comptroller General or Inspector General.

(1)(i) The Comptroller General of the United States, an appropriate Inspector General appointed under section 3 or 8G of the Inspector General Act of 1978 (5 U.S.C. App.), or an authorized representative of either of the foregoing officials, shall have access to and the right to examine any of the Subcontractor's or any of its lower-tier subcontractor's records that pertain to and involve transactions relating to this Subcontract or a lower-tier subcontract hereunder; and

(ii) The Comptroller General of the United States, or an authorized representative officials, shall have access to and the right to interview any officer or employee regarding such transactions.

(2) This paragraph (d) may not be construed to require the Subcontractor or lower-tier subcontractor to create or maintain any record that the Subcontractor or lower-tier subcontractor does not maintain in the ordinary course of business or pursuant to a provision of law.

(e) Reports. If the Subcontractor is required to furnish cost, funding, or performance reports, the Contracting Officer or an authorized representative of the Contracting Officer shall have the right to examine and audit the supporting records and materials, for the purpose of evaluating (i) the effectiveness of the Subcontractor's policies and procedures to produce data compatible with the objectives of these reports and (ii) the data reported.

(f) Availability. The Subcontractor shall make available at its office at all reasonable times the records, materials, and other evidence described in paragraphs (a), (b), (c), (d), and (e) of this

clause, for examination, audit, or reproduction, until 3 years after final payment under this Subcontract or for any shorter period specified in Subpart 4.7, Contractor Records Retention, of the FAR, and any corresponding implementing or supplementing provision in the NFS, or for any longer period required by statute or by other clauses of this Subcontract. In addition:

(1) If this Subcontract is completely or partially terminated, the Subcontractor shall make available the records relating to the work terminated until 3 years after any resulting final termination settlement; and

(2) The Subcontractor shall make available records relating to appeals under the “Disputes” Article or to litigation or the settlement of claims arising under or relating to this Subcontract until such appeals, litigation, or claims are finally resolved.

(g) The Subcontractor shall insert a clause containing all the terms of this clause, including this paragraph (g), in all lower-tier subcontracts under this Subcontract. The clause may be altered only as necessary to identify properly the contracting parties and the Contracting Officer under the Government prime contract.

(h) If this is a cost-reimbursement Subcontract with an educational or other nonprofit institution, the provisions of OMB Circular No. A-133, “Audits of States, Local Governments, and Nonprofit Organizations,” apply to this Subcontract.